

Private foundation; self-dealing; student loan guarantees. The guarantee of loans made to disqualified persons under a student loan guarantee program established by a private foundation for the children of its employees constitutes an act of self-dealing within the meaning of section 4941(d)(1)(E) of the Code.

'Advice has been requested whether the guarantee of loans made to disqualified persons under a student loan guarantee program established by a private foundation for the children of its employees will constitute acts of self-dealing within the meaning of section 4941(d)(1) of the Internal Revenue Code of 1954.

The private foundation established the student loan guarantee program by a grant to X. X is an organization which through arrangements with the Federal government as well as various state governments, educational institutions, and private organizations guarantees low cost student loans made by various cooperating financial institutions. X is recognized as exempt under section 501(c)(3) of the Code and is excluded from private foundation status under section 509(a)(1).

'Under the terms of the program, the private foundation made an initial grant of \$10,000 to X, and X agreed to guarantee \$100,000 in loans to children of employees of the private foundation. All the surrounding facts and circumstances indicate the program is not compensatory to the employees. In the future, the private foundation may make additional grants to increase or maintain the amount of loans guaranteed under the program.

'Under the program, the children of all of the private foundation's employees, including a few who are disqualified persons, are eligible to apply for the loan guarantees. X processes the loan guarantee applications in the order in which they are received. X administers the program so that no preference is given to one eligible student over another.

'The present rules of the program provide that a student may receive loan guarantees on loans of up to \$2,500 a year with a maximum guarantee of \$7,500 for undergraduate students and \$10,000 for graduate students. Interest on the guaranteed loans cannot exceed a maximum rate of 7 percent per annum. Interest on the loans may be partially paid by the Federal government. No interest subsidy is provided by X or by the private foundation.

Section 4941 of the Code imposes taxes on each act of self-dealing between a disqualified person and a private foundation. Section 4941(d)(1)(E) provides that the term 'self-dealing' means any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or the assets of a private foundation.

'Section 4946(a)(1) of the Code provides that the 'disqualified person' includes, with respect to a private foundation, a person who is a foundation manager as well as a member of his family.

'Section 53.4941(d)-2(f)(1) of the Foundation Excise Tax Regulations provides that the indemnification (of a lender) or guarantee (of repayment) by a private foundation with respect to a loan to a disqualified person shall be treated as a use for the benefit of a disqualified person of the income or assets of the foundation. In addition, if a private foundation makes a grant or other payment which satisfies the legal obligation of a disqualified person, such grant or payment shall ordinarily constitute an act of self-dealing to which this subparagraph applies.

Section 53.4941(d)-(f)(2) of the regulations provides that the fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing.

'An incidental or tenuous benefit occurs when the general reputation or prestige of a disqualified person is enhanced by public acknowledgement of some specific donation by such person, when a disqualified person receives some other relatively minor benefit of an indirect nature, or when such a person merely participates to a wholly incidental degree in the fruits of some charitable program that is of broad public interest to the community.

'Although the grant made by the private foundation to X is not used to provide loans to disqualified persons, the grant can be used by X to guarantee loans made to disqualified persons and, in the event a disqualified person defaults, in repaying his loan. Each time a loan made to a disqualified person is guaranteed with funds granted by the private foundation, the income or assets of the foundation are being used indirectly to satisfy the legal obligation of a disqualified person. See section 53.4941(d)-(f)(1) of the regulations. Such use of the foundation's income or assets confers more than an incidental or tenuous benefit upon the disqualified persons involved.

Accordingly, the guarantee of loans made to disqualified persons under the above described student loan guarantee program will constitute acts of self-dealing within the meaning of section 4941(d)(1)(E) of the Code.